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EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,503

Applicant(s)

AGGARWAL ET AL.

Examiner

Jennifer A. Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. In view of the Supplemental Appeal Brief filed on June 30, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, Applicant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then Applicant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1, 3 - 4, 8 - 9 and 12 - 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Romesberg et al. (US 5,582,906).

Romesberg is directed to a laminated headliner (Title).

As to claims 1 and 12 - 13, Romesberg teaches a headliner as shown in Figure 2.

Romesberg teaches a *decorative cover layer* 52 comprising a woven fabric with a permeable vinyl coating (column 5, lines 53 - 59); the Examiner equates this decorative cover layer to Applicant's "decorative layer (6)". Romesberg teaches a *second layer of thermoplastic film or web adhesive* 46 which is identical in physical and chemical composition to *film* 24 (column 5, lines 5 - 10). Romesberg teaches that the *film* 24 prevents bleed through of the liquid adhesive resin (column 4, lines 20 - 25); therefore, if a *second layer of thermoplastic film or web adhesive* 46 has the same composition as *film* 24, then it will also prevent bleeding through. It should be noted that the film is expected to exhibit some level of permeability to gases due to the composition of the film (i.e., ethylene-acrylic acid copolymer) and the thin nature of the film. According to Finlayson (US 4,975,138), DAF 899 has a thickness of 0.3 mm (Finlayson, column 4, lines 15 - 35). The Examiner equates this layer to Applicant's "semi-permeable and migration-resistant barrier layer (8)". Romesberg teaches a *second layer of fiber glass mat* 41 adjacent to the previous layer (column 3, lines 4 - 6 and column 4, lines 65 - 69) which the Examiner equates to Applicant's "air-permeable second reinforcement layer (5)". Romesberg teaches an open celled foam layer adjacent to the fiber glass mat (column 2, lines 3 - 65 and column 4, lines 63 - 65) which the Examiner equates to Applicant's "air-permeable support (3)". Romesberg teaches a *first fiber glass mat* 37 (column 4, lines 45 - 50) equated to Applicant's "air-permeable first reinforcement layer (4)". Romesberg teaches a *non-porous film* 24 (column

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4, lines 20 - 25) equated to Applicant's "air-impermeable back layer (9)". Romesberg teaches that resin and film layers are used to adhere the layers of the laminate (column 4, lines 15 - 45). The Examiner equates the resin of Romesberg to Applicant's "air-permeable adhesive". It should be noted that prior to curing the resin, it is expected that the resin would exhibit some level of air permeability. As to the method steps in claims 12 and 13, Romesberg teaches delivering the layers of the laminate over a pair of pinch rollers, impregnating the foam layer with resin in a bath, applying the fiber glass layers and cutting and compressing the laminated with heated molds (column 4, lines 1 - 65 and column 5, lines 45 - 69).

As to claims 3 and 16, Romesberg teaches that the open celled foam layer, or "air-permeable support (3)", can comprise polyurethane (column 7, lines 1 - 15).

As to claims 4, 15 and 17, Romesberg teaches that the "air-permeable first reinforcement layer (4)" and "air-permeable second reinforcement layer (5)" are fiber glass mat 37 (column 4, lines 45 - 50) and fiber glass mat 41 (column 3, lines 4 - 6 and column 4, lines 65 - 69).

As to claim 8, Romesberg teaches that teaches that the *film* 46, or "semi-permeable and migration-resistant layer (8)", prevents bleed through of the liquid adhesive resin (column 4, lines 20 - 25).

As to claim 9, Romesberg teaches that the *film* 46, or "semi-permeable and migration-resistant layer (8)", can be an ethylene-acrylic acid copolymer sold by Dow Chemical under the trade designation DAF 899 (column 4, lines 15 - 20). According to Finlayson (US 4,975,138), DAF 899 has a thickness of 0.3 mm (Finlayson, column 4, lines 15 - 35).

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As to claim 14, Romesberg teaches that the decorative cover layer 52, or “air-permeable decorative layer (6)” has a layer of vinyl, which adheres the decorative cover layer to the rest of the laminate (column 5, lines 54 – 60).

As to claim 18, Romesberg teaches the application of adhesive via the resin source 18 (column 4, lines 10 – 15). As seen in Figure 1, the resin source feeds to spraying mechanisms above the assembly line.

As to claims 1, 12 and 19, although Romesberg does not explicitly teach the claimed layers on the passenger compartment side have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$ as required by claims 1 and 12 and $900\text{Nsm}^{-3} < R1 < 1900\text{sm}^{-3}$ as required by claim 19, it is reasonable to presume that that passenger compartment side has an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$ and $900\text{Nsm}^{-3} < R1 < 1900\text{sm}^{-3}$ is inherent to Romesberg. Support for said presumption is found in the use of like materials (i.e. an air-permeable reinforcement layer, an air-permeable decorative layer and a semi-permeable and migration resistant barrier layer) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property that the layers on the passenger compartment side have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$ and $900\text{Nsm}^{-3} < R1 < 1900\text{sm}^{-3}$ would obviously have been present once the Romesberg product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Claim Rejections - 35 USC § 103

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4. Claims 1, 5 – 8, 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozek et al. (US 6,204,209) in view of Doerfling et al. (US 3,935,353) and Sandoe et al. (US 2001/0036788 A1).

Rozek is directed to a laminated article suitable for use as decorative sound absorbing panels for automotive applications and are well suited for use as vehicle headliners (Abstract).

As to claim 1, Rozek teaches a laminate comprising a decorative cover sheet 22 adjacent to a reinforcing layer 20 adjacent to a rigid foam layer 14 adjacent to a second reinforcing layer 18 adjacent to a fibrous batt 12 adjacent to a third reinforcing layer 16 adjacent to a release layer 24. The decorative cover sheet 22, equated to Applicant's "air-permeable decorative layer (6)", can be a decorative porous fabric material (column 6, lines 11 – 15). The reinforcing layer 20, equated to Applicant's "semi-permeable and migration resistant barrier layer (8)", can be a blend of natural fibers and thermoplastic fibers (column 5, lines 60 – 65). Rozek suggests that the thermoplastic fiber can be polyester (column 5, lines 25 – 60) and the natural fiber can be selected from sisal, abaca and coconut fibers, which are known to be cellulosic fibers.

The rigid foam layer 14, equated to Applicant's "air-permeable second reinforcement layer (5)", is sufficiently porous so that one can gently blow air at one side of the layer and feel the air coming through on the other side (column 7, lines 18 – 20). The second reinforcing layer 18, equated to Applicant's "air-permeable support layer (3)", is porous to a sufficient degree so it does not act as a sound reflector (column 4, lines 30 – 35). The fibrous batt 12, equated to Applicant's "air-permeable first reinforcement layer (4)", is needled (column 3, lines 15 – 20) which would result in a permeable structure. The layers of the laminate are bonded together using a resin binder, equated to Applicant's "air-permeable adhesive (7)", which is provided in

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an amount that does not interfere excessively with the porosity of the laminate (column 5, lines 1 – 7).

As to claims 5 - 6, Rozek teaches that the reinforcing layer 20, or “semi-permeable and migration resistant barrier layer (8)”, can be a blend of natural fibers and thermoplastic fibers (column 5, lines 60 – 65). Rozek suggests that the thermoplastic fiber can be polyester (column 5, lines 25 – 60) and the natural fiber can be selected from sisal, abaca and coconut fibers, which are known to be cellulosic fibers.

As to claim 10, Rozek teaches that the adhesive (7) is an elastomeric composition comprising 100 parts by weight of a polyol having three or four hydroxyl groups, 85 parts by weight of an isocyanate compound having at least 2 reactive isocyanate groups, such as methylene-bis-phenyl isocyanate, 0.05 to 0.10 parts of a catalyst such as tin octoate or lead naphthanate, and 5 to 20 parts of solvent such as trichlorofluoromethane or methylene chloride (column 5, lines 13 – 20). Wenning (US 5,874,173) teaches that two-pack polyurethane adhesives are essentially characterized by polyisocyanates as hardeners and by predominately oligomeric diols and/or polyols as resin. Therefore, the adhesive of Rozek can be considered to be a two-pack polyurethane adhesive.

As to claim 1 and 7 – 8, Rozek fails to teach that the reinforcing layer 20, or “semi-permeable and migration resistant barrier layer (8)”, is a migration-resistant barrier layer as required by claim 1. Rozek fails to teach that the surface of the barrier layer is treated or wetted so that it can enter into adhesion with the adhesive 7. Rozek fails to teach that the fibrous batt 12, or “semi-permeable and migration-resistant barrier layer (8)”, is migration-resistant to softeners,

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decomposition products used by ageing and/or additives from the polyurethane foam layer or the adhesive films as required by claims 8.

Doerfling is directed to a decorative covering material for enhancing the exterior appearance of a vehicle panel (Abstract). Doerfling teaches the use of a barrier coating or film to applied on a fabric to prevent or inhibit undesired migration of constituents to and from the adhesive film to the exterior surface of a facing sheet which may produce a discoloration or other surface imperfection therein. The barrier coating may also serve as a so-called tie coat for enhancing the strength of the initial or final bond of the adhesive coating to the underside of the facing sheet (column 4, lines 10 – 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to treat the reinforcing layer 20, or “semi-permeable and migration resistant barrier layer (8)”, in the laminate of Rozek with the barrier coating or film of Doerfling to create a migration-resistant barrier layer motivated by the desire to enhance the strength of the adhesive bond while minimizing discolorations and surface imperfections.

As to claim 1, Rozek in view of Doerfling fails to teach Applicant’s “air-impermeable back layer (9)” on the vehicle roof side.

Sandoe et al. (US 2001/0036788 A1) is directed to a vehicle headliner and laminate (Title). Sandoe teaches that vehicle headliners on the interior of the automobile are a decorative panel which separates the passenger compartment from the sheet metal forming the roof of the vehicle (page 1, [0005]). The Examiner equates the inherently air-impermeable sheet metal roof to Applicant’s “air-impermeable back layer (9)”.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to consider the sheet metal roof of Sandoe to be the final layer, or “air-impermeable back layer (9), of Rozek in view of Doerfling motivated by the desire to employ the laminate of Rozek in view of Doerfling in a final product such as a lined roof.

As to claims 5 and 20, Rozek fails to teach that the fabric weighs approximately 20 to 60 g/m² as required by claim 5 or approximately 45 g/m² as required by claim 20. It should be noted that the fabric weight is a result effective variable. For example, as the weight increases, the fabric becomes heavier, stronger and more rigid and as the weight decreases, the fabric becomes lighter, has less strength and more flexible. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a mixed fiber fabric with a fabric weight of approximately 20 to 60 g/m² as required by claim 5 or approximately 45 g/m² as required by claim 20, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have been motivated to optimize the fabric weight to create a suitably flexible and strong fabric for use in a laminate.

As to claim 1, although Romesberg does not explicitly teach the claimed layers on the passenger compartment side have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$, it is reasonable to presume that that passenger compartment side has an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$ and $900\text{Nsm}^{-3} < R1 < 1900\text{sm}^{-3}$ is inherent to Romesberg. Support for said presumption is found in the use of like materials (i.e. an air-permeable reinforcement

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layer, an air-permeable decorative layer and a semi-permeable and migration resistant barrier layer) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of that the layers on the passenger compartment side have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$ would obviously have been present once the Romesberg product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romesberg et al. (US 5,582,906), as set forth above, taken in view of Blum et al. (US 4,581,432).

Romesberg discloses that the decorative cover sheet 22, equated to Applicant's "air-permeable decorative layer (6)", can be porous fabric material (column 6, lines 11 – 15) but fails to disclose that the decorative cover sheet is a polyethylene nonwoven.

Blum et al. teaches molded parts useful for headliners (column 16, lines 30 – 35) comprising a decorative material (column 16, lines 14 – 15). The decorative material can be a non-woven material comprising polyethylene (column 16, lines 15 – 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to create the decorative layer of Romesberg from a polyethylene nonwoven fabric as suggested by Blum motivated by the expectation that polyethylene is high in strength and highly resistant to environmental insults such as mildew.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romesberg et al. (US 5,582,906).

Romesberg fails to teach that the “semi-permeable and migration-resistant barrier layer” has a thickness of 0.285 mm. It should be noted that the thickness is a result effective variable. For example, as the thickness increases, the layer more rigid and strength increases and as the thickness decrease, the layer becomes more flexible and strength decreases. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create the “semi-permeable and migration-resistant barrier layer” with a thickness of 0.285 mm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have been motivated to optimize the thickness to create a suitably flexible and strong layer for use in the headliner laminate.

Response to Arguments

4. Applicant's arguments filed June 30, 2005 have been fully considered but they are not persuasive.

Regarding the rejection of independent claims 1 and 12 over Romesberg et al. (US 5,582,906), Applicant argues that Romesberg et al. does not disclose an airflow resistance. The Applicant further argues that one cannot simply make an inference of airflow resistance based on the type of material used because there are a multitude of factors that must be considered when determining air permeability. The Examiner acknowledges that the Applicant claims generic materials for the layers that are claimed in association with a fairly broad property. The Applicant is attempting to claim the layers by what they are desired to do (i.e., have an air flow resistance of $500 \text{ Nsm}^{-3} < R1 < 2500 \text{ Nsm}^{-3}$), rather than by what the layers are. The Applicant

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requires in claims 1 and 12 that the layers on the passenger compartment side have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$. The layers that are the passenger compartment side of the instant invention are: an air-permeable second reinforcement layer (5), an air-permeable decorative layer (6) and a semi-permeable and migration resistant barrier layer (8). In the laminate of Romesberg, the Examiner has equated the *second layer of fiber glass mat* 41 to Applicant's "air-permeable second reinforcement layer (5)", the *decorative cover layer* 52 comprising a woven fabric with a permeable vinyl coating to Applicant's "decorative layer (6)" and the *second layer of thermoplastic film or web adhesive* 46 comprising film of ethylene-acrylic acid copolymer which prevents bleed through of adhesive to Applicant's "semi-permeable and migration resistant barrier layer (8)". Since Romesberg meets each and every chemical and structural requirement for each of the passenger side layers set forth in claims 1 and 12, then the layers must meet the air flow resistance that depends from said requirements. Since no other structural or chemical features are claimed in claims 1 and 12 which may distinguish the present invention from the Romesberg invention, the presently claimed air flow resistance is deemed to be inherent to the Romesberg invention. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. Without a showing that evidences a difference between the prior art and the present invention, anticipation is proper. However, such evidence could support the proposition that the current claims are incomplete. critical to the invention, which would patentably distinguish it from the known prior art. The Applicant has previous indicated that air flow resistance is dependent on thickness of the composite material, pore distribution density and pore diameter among other factors, all of which are not claimed. If these parameters are the crucial physical features that would result in the

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claimed layers with the specified air flow resistance, the parameters should be incorporated in the claim language. Given that the applied art desires and is designed to function as Applicant's intend their invention to function in all comparable aspects, including the same utility, one can only conclude that Romesberg inherently possesses the required air flow resistance, absent some evidence or showing that such a conclusion does not follow from the facts of record. The Examiner believes that passing to issue such claims that appear to be encompassed by Romesberg or are unclear as to what would infringe, would be a grievous error on the part of the Office.

Regarding the rejection of dependent claims 3 – 4, 8 – 9 and 13 – 18 over Romesberg et al. (US 5,582,906), Applicant argues that Romesberg et al. does not disclose an airflow resistance as claimed in independent claims 1 and 12 and, therefore, cannot anticipate the claims that depend from independent claims 1 and 12. As argued above, the Examiner has demonstrated that all the elements of independent claims 1 and 12 are present in Romesberg so the rejection of claims 3 – 4, 8 – 9 and 13 – 18 as being anticipated by Romesberg is proper. The Applicant argues that the present claims that specify a material on the passenger compartment side are claims 8 and 17. The Examiner submits that Romesberg teaches the limitations of claims 8 and 17, which further emphasizes the argument that the presently claimed air flow resistance is deemed to be inherent to the Romesberg invention.

Regarding the rejection of claims 2 and 19 as being anticipated or being obvious over Romesberg et al. (US 5,582,906), Applicant indicates that claim 2 was cancelled, which renders the argument moot. The Examiner apologizes for the oversight and corrected the rejection above. The Applicant argues that the narrower range for the airflow resistance is neither taught nor

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suggested in Romesberg. The Examiner submits, as discussed above, that since Romesberg meets each and every chemical and structural requirement set forth in claim 12, then the layers must meet the air flow resistance that depends from said requirements.

Regarding the rejection of claims 1, 5 – 8, 10 and 20 as being unpatentable over Rozek et al. in view of Rozek et al. (US 6,204,209) in view of Doerfling et al. (US 3,935,353) and Sandoe et al. (US 2001/0036788 A1), the Applicant argues that the Examiner has failed to address the air flow resistance limitation which was incorporated into claim 1. The Examiner apologizes for the oversight and corrected the rejection above. The Applicant argues that neither Rozek, Doerfling nor Sandoe teaches or suggests any amount of airflow resistance. The Examiner acknowledges that the Applicant claims generic materials for the layer that are claimed in association with a fairly broad property. The Applicant is attempting to claim the layers by what they are desired to do (i.e., have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$, rather than by what the layers are. The Applicant requires in claims 1 and 12 that the layers on the passenger compartment side have an air flow resistance of $500\text{Nsm}^{-3} < R1 < 2500\text{Nsm}^{-3}$. The layers that are the passenger compartment side of the instant invention are: an air-permeable second reinforcement layer (5), an air-permeable decorative layer (6) and a semi-permeable and migration resistant barrier layer (8). In the laminate of Rozek in view of Doerfling et and Sandoe et al., the porous decorative cover sheet 22 is equated to Applicant's "air-permeable decorative layer (6)", the reinforcing layer 20 of a blend of natural and thermoplastic fibers is equated to Applicant's "semi-permeable and migration resistant barrier layer (8)" and the air-permeable rigid foam layer 14 is equated to Applicant's "air-permeable second reinforcement layer (5)". Since Rozek in view of Doerfling et and Sandoe et al. meets each and every chemical and

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structural requirements for each of the passenger side compartment layers set forth in claims 1 and 12, then the layers must meet the air flow resistance that depends from said requirements. Since no other structural or chemical features are claimed in claims 1 and 12 which may distinguish the present invention from the Rozek in view of Doerfling et al. and Sandoe et al. invention, the presently claimed air flow resistance is deemed to be inherent to the Rozek in view of Doerfling et al. and Sandoe et al. invention. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. Without a showing that evidences a difference between the prior art and the present invention, anticipation is proper. However, such evidence could support the proposition that the current claims are incomplete. The Applicant has previously indicated that air flow resistance is dependent on thickness of the composite material, pore distribution density and pore diameter among other factors, all of which are not claimed. If these parameters are the crucial physical features that would result in the claimed layers with the specified air flow resistance, the parameters should be incorporated in the claim language. Given that the prior art desires and is designed to function as Applicant's intend their invention to function in all comparable aspects, including the same utility, one can only conclude that Rozek in view of Doerfling et al. and Sandoe et al. inherently possesses the required air flow resistance, absent some evidence or showing that such a conclusion does not follow from the facts of record. The Examiner believes that passing to issue such claims that appear to be encompassed by Rozek or are unclear as to what would infringe, would be a grievous error on the part of the Office.

Regarding the rejection of claim 11 as being unpatentable over Romesberg et al. (US 5,582,906) in view of Blum et al. (US 4,581,432), the Applicant argues that Blum does not account for the deficiencies of the Romesberg et al. patent, especially that the vehicle headliner

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has layers on the passenger side with an airflow resistance of $500 \text{ Nsm}^{-3} < R1 < 2500 \text{ Nsm}^{-3}$. The Examiner submits, as discussed above, that since Romesberg meets each and every chemical and structural requirement set forth in claim 12, then the layers of Romesberg must meet the air flow resistance that depends from said requirements.


Regarding the rejection of claim 21 as being unpatentable over Romesberg et al. (US 5,582,906), the Applicant argues that Romesberg does not teach or suggest the required air flow resistance. The Examiner submits, as discussed above, that since Romesberg meets each and every chemical and structural requirement set forth in claim 12, then the layers of Romesberg must meet the air flow resistance that depends from said requirements.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer Boyd
September 9, 2005


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